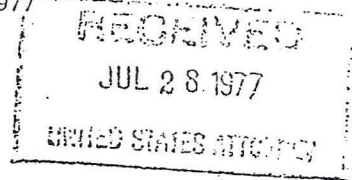




UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
1100 Commerce Street, Room 4A5
Dallas, Texas 75242

July 25, 1977



The Honorable Jamie C. Boyd
United States Attorney
Western District of Texas
655 E. Durango Blvd.
Hemisfair Plaza
San Antonio, Texas 78206

Dear Mr. Boyd:

Thank you for your letter of July 19, 1977. The date and time you have suggested for the meeting is agreeable with me.

In reference to the availability of Special Agents from the El Paso District Office, most will be in the area performing their normal functions on that date.

Deputy Regional Director Heath will accompany me to this conference and I would prefer that participants from your office be limited to achieve more productive results and build a better working relationship for the future. I also feel that we can discuss and resolve any past problems to our mutual satisfaction.

It has always been my policy and that of DEA to work in close harmony with all United States Attorney's Offices. This has been accomplished through frequent conferences and the immediate attention to resolving minor problems that may develop.

I am looking forward to meeting with you and thank you for taking this time from your busy schedule.

Sincerely yours,

Irvin C. Swank
Irvin C. Swank
Regional Director

UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT

437 U. S. Court House
El Paso, Texas 79901

April 12, 1976

*File
Vgo*

Mr. John E. Clark
United States Attorney
Hemisfair Plaza
655 E. Durango
San Antonio, Texas 78206

Re: Letter of April '1 pertaining to DEA Personnel

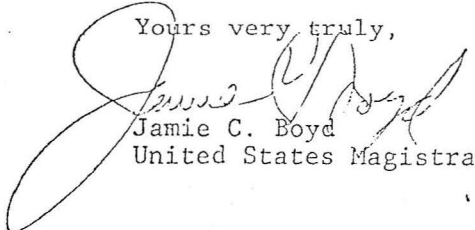
Dear Mr. Clark:

After the above letter was mailed to you, I again proof-read it and discovered an error which occurs in the first sentence of the second paragraph on page 2. It states, "during the latter part of 1973 and early part of 1974" et cetera. The sentence should read:

... "during the latter part of 1974 and early part of 1975" et cetera.

~~I would appreciate it if you would make this letter an addendum to my letter of April 1 in order to set the record straight.~~

Yours very truly,


Jamie C. Boyd
United States Magistrate

JCB:bc

UNITED STATES GOVERNMENT

Memorandum

cy for each
H. S. T.

: Jamie C. Boyd
United States Attorney

DATE: August 1, 1977

M : LeRoy Morgan Jahn ^{11/16}
Assistant United States Attorney

SUBJECT: Freeze

In response to your request, I have reviewed the transcript of the preliminary hearing in United States v. Lopez. It is my conclusion and certain belief that the search by Drug Enforcement Agents of Room 15, Allstate Motel, was completely invalid under Amendment IV to the Constitution.

A. The Facts

On May 5, 1977, Special Agent Licon met with Defendant David Headrick on a parking lot in El Paso, Texas (Tr. 6). Licon had met with Headrick four days previously, through the intercession of an informant, in an attempt to negotiate the purchaser of five ounces of heroin (Tr. 3-4, 13-14). However, Headrick was unable to locate his supply source, and the dealings were terminated on that day (Tr. 5, 15).

At this meeting, which occurred in Agent Licon's vehicle, the two discussed price and a delivery schedule (Tr. 6). Headrick was to deliver the five ounces of the heroin in three stages: one ounce first, then two deliveries of two ounces (Tr. 6). Agent Licon agreed to pay \$1,300.00 an ounce, but would retain \$100.00 of the payment on the first ounce until the second delivery (Tr. 6).

In 20 minutes, at 2:20 p.m., Headrick returned with the first ounce, and received the payment of \$1,200.00 (Tr. 7). Stating that he would return shortly with the first of the two ounce deliveries, Headrick again left (Tr. 7). However, upon his return Headrick did not have the heroin; he asked Agent Licon to wait because his source was in a motel room in the vicinity and was weighing the heroin to insure that Agent Licon would not be cheated (Tr. 7).



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Memo to Mr. Boyd
Page 2, August 1, 1977

After a second trip to placate Licon, Headrick produced the two ounces of heroin at 5:20 p.m. (Tr. 7). When Agent Licon attempted to arrest Headrick, he fled and attempted to dispose of the heroin. He was apprehended by the surveillance agents, and Licon recovered the contraband (Tr. 8).

The surveillance agents had observed the entire transaction (Tr. 7). On two occasions after Headrick met with Agent Licon, they observed Headrick meet with Defendant Hugo Lopez, but the agents did not see the two defendants exchange anything between them; nor was any conversation between the two defendants overheard (Tr. 9, 22-23). However, the informant had overheard Headrick say something about a "Hugo" and Room 15, Allstate Motel (Tr. 9).

The agents had observed Defendant Lopez register at the Allstate Motel and go into Room 15 (Tr. 9). They had also observed Defendant Lopez meet with an unidentified male, whom the agents lost during surveillance (Tr. 11).

Lopez was therefore arrested, contemporaneously with Headrick, on the same parking lot where the transaction ensued (Tr. 22). After the arrests and after warnings were given to each defendant, Headrick identified Lopez as the source of the heroin. During questioning, Lopez was asked where the scales were, and he said, "They are in the room." (Tr. 10). When asked if he had a motel key, Lopez said it was in his car; the key to Room 15, Allstate Motel was retrieved from Lopez' vehicle by an agent (Tr. 10).

The agents went to the Motel, spoke to the manager, and entered Room 15 without a search warrant. From within the room, the agents seized approximately one ounce of heroin, some white powder, presumably used to cut the heroin, and a set of scales (Tr. 11, 24). The justification given by the agents at the hearing for the entry of the room without a warrant was that they supposed that the third party that met with Lopez was still in the motel room and might destroy the evidence (Tr. 11-12).

B. The Law

It is axiomatic that the warrantless search of a dwelling is, per se, unreasonable. The Fourth Amendment prohibits both unreasonable searches and seizures, and its protection extends to both houses and effects. Over and again, the Supreme Court has emphasized that the mandate of the Amendment requires adherence to judicial processes, through which officers may obtain warrants based on probable cause to search such dwellings. Agnello v. United States, 269 U.S. 20 (1925); and Weeks v. United States, 232 U.S. 383 (1914). The only exception to the warrant requirement of the Fourth Amendment would be a search incident to a valid arrest, United States v. Rabinowitz, 339 U.S. 56 (1950), or under "exceptional circumstances," Johnson v. United States, 333 U.S. 10 (1948), and then the burden is on those seeking the exemption--the Government--to show the need for it, McDonald v. United States, 335 U.S. 451, 456 (1948).

The Supreme Court has also repeatedly held that by requiring a search warrant issued upon a finding of probable cause, the Amendment does not place an unduly oppressive weight on law enforcement officers, but merely interposes an orderly procedure under the "aegis of judicial impartiality that is necessary to obtain the beneficent purposes intended." United States v. Jeffers, 342 U.S. 48, 51 (1951). The Court has repeatedly chastized law enforcement officers who, instead of obeying this mandate, have too often taken matters into their own hands and invaded the security of people against unreasonable search and seizure. See e.g., United States v. Jeffers, *supra*, 342 U.S. at 51; Johnson v. United States, *supra*, 333 U.S. at 13-14. The fact that the dwelling in the instant case was a hotel room does not negate the right of the people occupying that room to be free of unreasonable searches and seizures, and the Court has not made a distinction between hotels and residences; Ibid.

The search of the hotel room in the instant case was "justified" because of the possibility that the third person seen meeting with Defendant Lopez might be in the room and might be destroying evidence. The rationale that there might be someone on the premises who could very easily be destroying evidence of a crime has previously been offered to the Supreme Court to justify the warrantless search of a dwelling. The justification was very easily rejected by that Court as a rationale that would excuse the officers involved from securing a warrant to search the premises. Vale v. Louisiana, 399 U.S. 30, 34 (1970).

In rejecting the rationale presented by the officers who conducted the search, the Court reviewed those "few specifically established and well-delineated" situations where the warrantless search of a dwelling may withstand constitutional scrutiny, even though authorities have probable cause to conduct it. Id., quoting Katz v. United States, 389 U.S. 347, 357 (1967). Those well-delineated exceptions to the warrant requirement include: consent to the search (Zap v. United States, 382 U.S. 624, 628 (1965)); hot pursuit of a fleeing felon (Warden v. Hayden, 387 U.S. 294, 298-299 (1966)); Chapman v. United States, 365 U.S. 610, 615 (1960)); knowledge that the goods in question are in the process of being destroyed (Schmerber v. California, 384 U.S. 757, 770-771 (1965)); and knowledge that the goods are about to be removed from the jurisdiction, Chapman v. United States, 365 U.S. 610, 615 (1960)).

These are the only established exceptions to the warrant requirement, and the Court has most recently made it quite clear that it will not enlarge on any inroads into the protections guaranteed by the Fourth Amendment. Thus, in United States v. Chadwick, U.S. ____ (21 C.R.L. 3169) (June 21, 1977), the Court reiterated its continuing holding that a judicial warrant has a "significant role to play in that it provides a detached scrutiny of a neutral magistrate which is more reliable against improper searches than the hurried judgment of a law enforcement officer" who is often engaged in the competitive enterprise of ferreting out

Memo to Mr. Boyd
Page 5, August 1, 1977

crime. 21 C.R.L. 3171. The Court was particularly swayed by the fact that the perpetrators of the crime involved in Chadwick were securely in custody and were not dissuaded from holding the search illegal even though on the record before them, "the issuance of a warrant by a judicial officer was reasonably predictable," as it was in the instant case. 21 C.R.L. 3173.

It is my understanding that the Drug Enforcement Administration in El Paso takes the position that they can arrest or detain individuals and enter a dwelling in order to "freeze" the situation until the warrant can be required, and that the instant search is an outgrowth of this policy. Even where an arrest is legally made, there is no question that a "search" of the premises can only include those areas within the immediate control of the arrestee for the officers protection. Without an arrest, the individuals cannot be merely "detained" pending procurement of the search warrant to garner the necessary evidence against them. Rogers v. United States, 330 F.2d 535, 538-539 (5th Cir. 1964). The sole course of constitutionally permissible action under these circumstances is to impound the premises from without until a search warrant is obtained.

memorandum

DATE: August 3, 1977
REPLY TO: Jamie C. Boyd
ATTN OF: United States Attorney
SUBJECT: Freeze

TO: All Assistant U.S. Attorneys

Attached hereto is a memorandum, dated August 1, 1977, prepared by Mrs. LeRoy M. Jahn, pertaining to the subject of warrantless entries of premises or residences.

I am requesting that each attorney who tries criminal cases give particular attention to the legal authorities and policy enunciated in the memorandum. You may not be aware that for the past couple of years there has been a considerable controversy between the former United States Magistrate and the Drug Enforcement Administration concerning this important matter of due process.

I am hereby requesting that when a case is presented to you wherein such procedures as outlined in the memo are followed, that you give due consideration as to whether or not it has merit for prosecution.. I would direct your particular attention to the last sentence in the last paragraph of the memo of August 1st.

Also enclosed is a copy of my letter to Mr. George C. Frangulie, Agent in Charge of the El Paso office for the Drug Enforcement Administration. As each of you are aware, search and seizure procedures are complex in nature and each case should be considered on its own merits. However, I would urge you to insist that the principles set out in the memo of August 1, 1977, by way of legal authorities, be strictly adhered to as pertains to the prosecution of cases by this office.

Encl.



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U.S. Government Printing Office: 1976-241-530/3018

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

United States Department of Justice

UNITED STATES ATTORNEY

WESTERN DISTRICT OF TEXAS

655 E. DURANGO BLVD.

HEMISFAIR PLAZA

SAN ANTONIO, TEXAS 78206

August 3, 1977

Mr. George C. Frangullie
Agent in Charge
Drug Enforcement Administration
4110 Rio Bravo, Suite 100
El Paso, Texas 79902

Dear Mr. Frangullie:

This is to advise you that on August 1, 1977, I met with Mr. Irvin C. Swank, Regional Director, Drug Enforcement Administration, and his Deputy, Mr. Edward A. Heath, for the purpose of discussing mutual problems existing between your office and the United States Attorney's office.

One of the primary subjects of discussion involved the issue which came up in the case of United States v. Lopez, et al, wherein there was a search of a motel room without the benefit of securing a warrant. As you will recall, you and I have discussed problems of a similar nature which arose prior to your assuming the position as Agent in Charge of the Drug Enforcement Administration in El Paso, Texas. I refer specifically to the issue which is sometimes euphemistically referred to as the "freeze". Although I have disqualified myself from making any decision and making a final determination in United States v. Lopez, et al, since I was the magistrate in the original preliminary hearing, I have, on the basis of that case and the Beltran case, formulated a basic policy which my office staff will enforce as to the manner in which searches and seizures are conducted for Federal agencies.

AS you are aware, the area of the law involving search and seizure is a very difficult one indeed, and each case will be decided on its own merits. On the other hand, I am disseminating this letter and the enclosed memorandum,

August 3, 1977

Mr. George C. Frangullie
Agent in Charge
Drug Enforcement Administration

dated August 1, 1977, subject matter "freeze" to all of my assistants who are concerned with the trial of criminal cases.

The legal authorities enunciated in the memorandum will serve as the guidelines for this office in all cases presented for prosecutive opinion where there is a warrantless search of a dwelling or residence. If you will note in the last sentence of the last paragraph, the pertinent words are as follows: "The sole course of constitutionally permissible action under these circumstances is to impound the premises from without until a search warrant is obtained." You will observe that the legal conclusions set forth in the memorandum are based entirely upon the facts drawn from a transcript of sworn testimony given by a special agent of the Drug Enforcement Administration.

I wish to reemphasize that each case will be considered upon its own individual merits, but I also want to state, unequivocally, where in each case where there is a warrantless entry for the purpose of freezing or impounding the premises involving the actual entry of the premises, extremely close scrutiny will be given the case concerning its prosecutive merits.

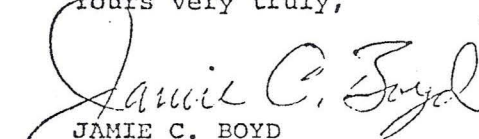
This letter is in no way intended to interfere with your legitimate field operations which come exclusively within your domain. However, it should be clearly understood that this office, before accepting a case for prosecution, will demand that basic due process be observed, especially when it involves the warrantless entry of a dwelling or a place of residence.

August 3, 1977

Mr. George C. Frangullie
Agent in Charge
Drug Enforcement Administration

In the event you have any questions or you or your counsel wish to discuss this matter with me and members of my staff, we are open to any discussion which you may have.

Yours very truly,


JAMIE C. BOYD
United States Attorney

Encl.
Memo 8/1/77

United States Department of Justice

UNITED STATES ATTORNEY
WESTERN DISTRICT OF TEXAS
655 E. DURANGO BLVD.
HEMISFAIR PLAZA
SAN ANTONIO, TEXAS 78206

*Here is
your address
Correspondence
JCB*

August 3, 1977

Mr. Irvin C. Swank
Regional Director
Drug Enforcement Administration
1100 Commerce Street, Room 4A5
Dallas, Texas 75242

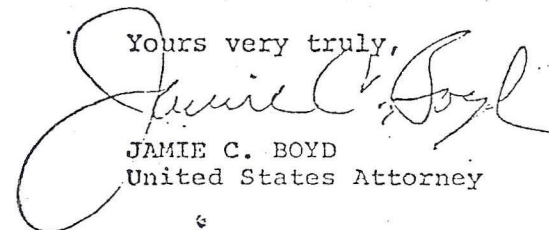
Dear Mr. Swank:

I want to thank you and Mr. Heath for the courtesy which you recently extended the United States Attorney for the Western District of Texas by travelling to El Paso on August 1st for the purpose of a conference between members of our respective offices.

I was pleased to have the opportunity to visit with you in a candid manner concerning our mutual problems, and I hope that the meeting was beneficial to all parties concerned. I wish to reassure you that my staff is interested in providing the Drug Enforcement Administration with professional, competent and vigorous support in our mutual efforts to enforce the drug laws.

If there is any way that I can be of future service to you, or if you wish to discuss the matter further, please feel free to call on me.

Yours very truly,



JAMIE C. BOYD
United States Attorney

memorandum

DATE: August 3, 1977
 REPLY TO: Jamie C. Boyd
 ATTORNEY: U.S. Attorney

SUBJECT: August 1 Meeting with Ervin C. Swank, DEA

to: File

On August 1, 1977, at 2:00 p.m., a meeting was held in the U.S. Attorney's Office, in the library, at El Paso, Texas, between the following parties: Mr. Ervin C. Swank, Regional Director of the Drug Enforcement Administration, Dallas, Texas; Mr. Heath, Assistant Regional Director, Drug Enforcement Administration; United States Attorney Jamie C. Boyd; Mr. Frank Walker, Assistant U.S. Attorney in charge of the El Paso office; and, Mr. Jeremiah Handy, Assistant U.S. Attorney.

The meeting was initially requested by the United States Attorney for the Western District of Texas, Jamie C. Boyd, and was for the purpose of discussing with the top management of the Drug Enforcement Administration certain problems which have transpired because of disharmony between the U.S. Attorney's Office, El Paso, and the Drug Enforcement Administration in El Paso, Texas.

The meeting lasted approximately one and one-half hour, and a full, frank, candid and amiable discussion was had by all parties. During the meeting, United States Attorney for the Western District of Texas, Jamie C. Boyd, related to Mr. Swank and all members present certain allegations which he had received information about concerning criticisms of U.S. Attorneys, El Paso, Texas, by members of the Drug Enforcement Administration. Additionally, it was related by Boyd that due to complaints made by George C. Frangullie, Agent in Charge of the Drug Enforcement Administration, El Paso, to the FBI, concerning alleged misconduct of Assistant U.S. Attorneys in the El Paso office, a full administrative inquiry was requested by the Deputy Attorney General which required the FBI to conduct a full administrative inquiry into the conduct of the El Paso office attorneys. Mr. Swank was informed that although none of the allegations pertained to the U.S. Attorney, however, he had never been informed by Mr. Frangullie prior to the filing of the complaints by the FBI, nor had Frangullie consulted me that he was conferring with the FBI concerning allegations of misconduct of Assistant U.S. Attorneys.

It was disclosed to Mr. Swank that the administrative inquiry had been completed with the result that none of the allegations made against the office were in fact in any way creditable, and were wholly without any factual basis. United States Attorney Boyd indicated to Mr. Swank that he was extremely disturbed by the lack of courtesy displayed by Frangullie by his failure to make



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August 3, 1977

known in advance of his actions in consulting with the FBI. A discussion was centered around the fact that considerable criticism by supervisory personnel to younger agents of the Drug Enforcement Administration as to the dissatisfaction with the U.S. Attorney's Office was creating extremely bad morale problems and working relationship with the U.S. Attorney's Office to the extent we are not able to function in an efficient manner.

The United States Attorney nor any of his assistants requested that any particular disciplinary action be effected, but simply that the management of the Drug Enforcement Administration take whatever action they deemed appropriate to restore a professional working relationship between the two offices, and they were assured that the United States Attorney would cooperate fully in seeing that the office of the United States Attorney did its part to restore good relationship and working conditions.

The meeting ended with the representations by Mr. Swank and Mr. Heath that they would look into the matter and take appropriate action.

The purpose for the foregoing memo is to place on record in the files a statement of facts as to what transpired for whatever future reference it may be necessary to further understanding.

cc:

Frank Walker
El Paso

UNITED STATES GOVERNMENT

Memorandum

TO : Jamie C. Boyd
United States Attorney

DATE:

FROM : James W. Kerr, Jr.
Assistant U. S. Attorney

SUBJECT: Investigation of Secret Recordings of Conversations between
DEA Special Agents and Assistant U. S. Attorneys

This refers to your request for a memorandum from me concerning the predicate for the Grand Jury investigation of January 19, 1978, concerning the secret tapings of conversations with Assistant U. S. Attorneys by DEA Special Agents.

On Tuesday, January 17, 1978, you contacted me in El Paso, Texas and requested that I meet with you concerning a situation involving the Drug Enforcement Administration. A short time later, I met with you personally and you advised that Group Supervisor John H. Phillips was secretly recording telephone conversations with attorneys of this office.

In addition, Agent Phillips, in his position as a supervisor, had attempted to direct another agent to make a secret recording. Specifically, Agent Phillips had directed Special Agent Donald Hickman to contact me by telephone concerning the investigation of ~~XXXXXX~~, ~~XXXXXX~~, et al. Even though everyone familiar with the case is aware that it is not ready for presentation to the U. S. Attorney or for indictment, Agent Hickman was to record the decision of this office declining to indict at this juncture. The tape could then be utilized in an effort to shift the blame from the DEA El Paso District Office to the U. S. Attorney for the failure to make major conspiracy cases in this area.

Mr. Stanley M. Serwatka, Assistant U. S. Attorney and I worked late that same date. At approximately 8:00 p.m., Mr. Serwatka received a telephone call at the U. S. Attorney's Office from a DEA Special Agent advising that Agent Phillips was secretly taping telephone conversations with the attorneys of this office and that he was attempting



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to get other agents to do the same thing. The agent advised Mr. Serwatka that it was his opinion that these tapes would be utilized to embarrass this office into making precipitous prosecutive decisions resulting in the indictment of additional defendants in drug cases.

On Wednesday, January 18, 1978, a Special Agent of the Drug Enforcement Administration advised me personally that he had been directed to contact me by telephone and to re-present the case of ~~XXXXXXXXXX~~ which involves approximately 25 potential defendants in the New Mexico area. Even though the case agent is of the opinion that further investigation is required and the case is not ready for presentment to this office, the agent was to attempt to tape statements indicating that the U. S. Attorney is responsible for a delay in prosecution. The agent further advised that the secret tapes would be utilized to blackmail this office into making precipitous and possibly erroneous prosecutive decisions.

A review of my appointments calendar reflects that Special Agent Hickman had an appointment to discuss the ~~XXXXXX~~ case at 2:00 p.m., January 12, 1978. Mr. Hickman spent approximately 30 minutes with me on that occasion relating the status of the investigation. At that time, Mr. Hickman restated his position that the case is not ready for presentation to this office or for action by the Grand Jury. The appointment for Mr. Hickman had been made by Agent Phillips. Subsequent to the meeting with Mr. Hickman, Agent Phillips called January 12th and discussed the ~~XXXXXX~~ case with me. At that time I advised him that both Agent Hickman and I were of the opinion that further investigation was required.

Since Agent Hickman had personally reported on the status of the ~~XXXXXX~~ investigation, January 12, 1978, there appears to be no legitimate reason why he should have been directed to secretly tape the representation of the case a few days later. In view of all of this information, I came to the conclusion that an apparent effort was being made by Agent Phillips to cause false representations to be made to this office and possibly an attempt to obstruct justice by improperly influencing our prosecutive judgment.

Page Three

I immediately called you in Del Rio and advised you of the information which I had just received. As a result of our conversation, you directed that I issue subpoenas to Special Agents George Frangullie, John Phillips, Theodore Baden, Oscar Licon and all agents working under the supervision of Agent Phillips. Both of us agreed that the only way to insure the preservation of the evidence in this matter was to have an immediate Grand Jury investigation. Otherwise, the agents giving the information to this office could possibly be pressured into changing their stories. In addition, the secrecy of the Grand Jury proceedings would insure the candor of the agents reporting this situation to our office.

As a result of your past difficulties with the Drug Enforcement Administration, you indicated that it would be preferable for you not to participate in the investigation. Since the matter required immediate attention, you requested that I take charge of the investigation as the most experienced Assistant U. S. Attorney in El Paso.

A Special Grand Jury was called January 19, 1978. In an effort to eliminate publicity, the subpoenas were given directly to the Chief Deputy U. S. Marshal in El Paso, Texas, for coordination with Agent Frangullie. Copies of the subpoenas were given to the witnesses, but the original subpoenas have been returned to this office rather than being filed with the Clerk of the Court. Arrangements were made for the agents to wait in an office near the Grand Jury room rather than attracting attention by filling the corridor. As of this date, there has been no publicity of which I am aware in the mass media concerning this Grand Jury investigation.

Prior to the session, I contacted Special Agent in Charge George Steele of the FBI and requested that he have an agent available to the Grand Jury to take custody of any tapes which would be received as evidence. It appeared inappropriate to me for our office to maintain custody of any such tapes. Further, it was my intention to request the FBI to have the tapes analyzed to determine whether there had been any erasures, splicing, alterations or other indications of tampering.

Page Four

While this has not been a pleasant assignment, I believe that the action we took was vital to the preservation of the evidence and we have succeeded in our objective. The Grand Jury investigation corroborated the information which had been relayed to this office informally. In my opinion, the swift and decisive Grand Jury investigation has precluded the commission of criminal violations involving, among other things, false statements and suspect evidence being presented to this office to corruptly influence our prosecutive decision.

JWK:lap

United States Department of Justice

UNITED STATES ATTORNEY

WESTERN DISTRICT OF TEXAS

Post Office Box 74

EL PASO, TEXAS 79941

May 31, 1978

Honorable Benjamin R. Civiletti
Deputy Attorney General
Department of Justice
Washington, DC 20530

Dear Mr. Civiletti:

For the past several months I have debated whether or not I should write you this letter. I was hopeful that the matters to be discussed herein could be resolved without the necessity of troubling you with them. However, the problem has apparently been thrust upon you, possibly by members of the Drug Enforcement Administration. Under these circumstances, I feel it only appropriate that I furnish you with what I believe to be the full and complete story.

During January, 1978, several agents of the Drug Enforcement Administration brought to my attention that Group Leader John Phillips of the Drug Enforcement Administration had issued instructions to his agents to secretly record conversations of Assistant United States Attorneys in El Paso, Texas, and that Agent Phillips was also secretly recording conversations. The agents who approached Assistant United States Attorney James W. Kerr, Jr., and I expressed deep concern, feeling that perhaps they were being ordered to do something, if not illegal, at least unethical. They also expressed the view that Agent Phillips apparently intended to use the tapes for some ulterior purpose. They indicated they were caught in a dilemma for the reason that they did not care to indulge in such conduct but feared that if they did not, or if it became known to Agent Phillips that they had reported it, that punitive action would be taken against them. It was my decision to take the matter immediately before the federal grand jury in an effort to determine exactly what was transpiring. It has been suggested by some that perhaps this was an overreaction on my part. With this opinion, I must respectfully dissent and I will set out my reasons more fully below.

Page 2

Letter to Benjamin R. Civiletti, May 31, 1978

Numerous agents were called before the grand jury and their testimony recorded. Extreme caution was taken to avoid any publicity in the mass media. Needless to say, the testimony of some agents established the previous allegations about Agent Phillips' conduct. In fact, Agent Phillips ~~stated~~ that he did give the order to secretly tape and he had in fact secretly taped Assistant United States Attorney Kerr on at least one occasion himself. Special Agent-In-Charge George Frangullie, of the Drug Enforcement Administration in El Paso, ~~stated~~ that he was aware of Agent Phillips' instructions and conduct in this regard but took no action to stop him. Subsequently, the testimony before the grand jury was transcribed and since that time the Drug Enforcement Administration has made repeated efforts, which I have resisted and will continue to resist, to obtain copies of the transcripts. My reason for resisting their efforts to get the transcripts is based on the fact that I have credible evidence to substantiate the fact that they want them for the sole purpose of punishing those agents who had the courage and fortitude to come forward and tell the truth about this mess.

Yesterday, I interviewed an agent who stated to me unequivocally that he has heard Group Leader John Phillips state "that he will obtain those transcripts even if he has to go to the Attorney General of the United States to do so and when he does, he will see that those persons responsible will be punished." This agent informs me that if it becomes absolutely necessary, he will testify to this statement, under oath, or give an affidavit to this effect, but he feels there will be danger of retribution should it become known that he did so. I am also informed that there are others in the Drug Enforcement Administration, working under Special Agent Phillips, who are willing to testify likewise and that Special Agent-In-Charge George Frangullie has also been overheard to make similar statements. I make no effort to understand this reprehensible attitude on the part of some of the management of the Drug Enforcement Administration and it is for this reason that I have resisted their efforts to learn what transpired in the grand jury. Since no criminal indictments were returned and the offending parties have admitted to their actions, I fail to see any material reason why there is any need for Drug Enforcement Administration to have the transcripts unless it is to seek retribution upon those agents who had the courage to come forward and tell the truth.

Page 3

Letter to Benjamin R. Civiletti, May 31, 1978

During the past four years, while I was United States Magistrate in El Paso, and since becoming United States Attorney for the Western District of Texas, I have encountered serious difficulties with some of the Drug Enforcement Administration personnel in El Paso, Texas. Some of the excesses perpetrated by some of the Drug Enforcement Administration agents, which I objected to in my official capacity as United States Magistrate, and United States Attorney, included but were not limited to: (1) forceable entry of a private dwelling at night time without the benefit of a search warrant and the holding of the occupants hostage for several hours while a search warrant was being obtained; (2) the attempts to mislead the judiciary by filing complaints under oath knowing that the affidavit in support thereof was false; (3) providing false information to me as United States Magistrate in order to obtain excessive bonds; and other serious abuses of due process. These are facts of which I have personal knowledge and can document.

After I became convinced that this type of conduct was occurring, I brought it to the attention of the appropriate management of the Drug Enforcement Administration, both locally and regionally, with no visible signs of correction. It was thereafter that I wrote my letter dated April 1, 1976, to then United States Attorney John E. Clark (marked Exhibit 1) and provided him with five federal agents, who had personal knowledge of other serious misconduct in El Paso and Mexico by some members of the Drug Enforcement Administration. I am attaching statements given to former United States Attorney John E. Clark by Special Agents Herbert E. Hailes, Special Agent Jack Compton, Special Agent Joe Beurer, Special Agent R. N. Staton, Drug Enforcement Administration, and former Drug Enforcement Administration Special Agent Phillip M. DeHoyos. The statements are marked Exhibits 2 through 6 for identification and I earnestly solicit that you read them, for running through most of the statements is the theme that if you do not adhere to the organizational or party line in the Drug Enforcement Administration, there will be retribution brought down upon you. All of these agents have reviewed their statements and assure me

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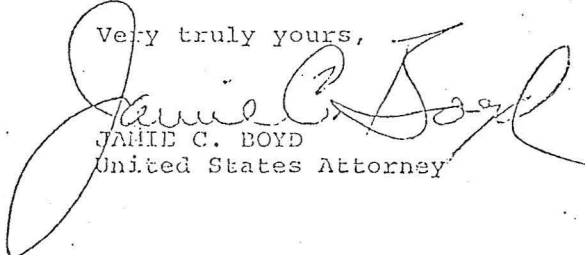
that they are accurate and they are willing to testify, under oath, to the facts contained therein. It is conceded that some of the information contained in the statements is hearsay, but my primary reason for including them is to show the attitude of retribution, which apparently exists in the Drug Enforcement Administration in El Paso, to those who would come forward with the truth even though it might be unfavorable to Drug Enforcement Administration.

I wish to assure you that I have never attempted to intrude upon the legitimate in-field investigations and operations of Drug Enforcement Administration unless those activities became a part and parcel of the judicial process or affected my prosecutorial discretion. I think that it is unfortunate that my efforts to curtail what I genuinely believe to be excessive conduct on the part of some Drug Enforcement Administration agents has been misconstrued by some of the agents and management of the Drug Enforcement Administration. I have discussed some of these problems with Mr. Irwin Swank, Regional Commissioner, Mr. Peter Bensinger, and Mr. John Evans, Chief of Enforcement for Drug Enforcement Administration. I believe that Mr. Bensinger and Mr. Evans are genuinely concerned and would like to see an end to the dissension in order that we can all get about our primary function of enforcing the narcotics laws. Conversely, it is not my opinion that some of Mr. Bensinger's and Mr. Evans' subordinates are in accord with their bosses' decisions or have made a good faith effort to bring about a harmonious relationship. After four years I am weary of the conflict and wish it would end. I am encouraged by recent information that some management changes are to be effected in the Drug Enforcement Administration in El Paso. Undoubtedly, controversies which diminish mutual trust and confidence between Government agencies affect the abilities of the parties to accomplish their assigned missions. Although I will continue to resist what I believe to be excessive conduct on the part of law enforcement agents, I pledge that I will in good faith work hard to develop a spirit of cooperation and harmony between the United States Attorney's office for the Western District of Texas and the Drug Enforcement Administration in El Paso. Incidentally, we have a superb working relationship with the Drug Enforcement Administration in San Antonio and I see no reason why it could not exist in El Paso if all parties make a good faith effort to do so.

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This letter is not intended to suggest or solicit any particular action on your behalf, but I feel that you might appreciate having access to all of the facts which have developed in this unfortunate situation. In the event you have any suggestions which you feel would be of assistance in bringing an end to this long smouldering business, I would be most appreciative to receive them and I assure you I will give them every consideration. Also, if you should desire additional information and should consider a personal visit necessary, I will be most happy to meet with you and others wherever you designate to discuss the situation.

Very truly yours,



JAMIE C. BOYD
United States Attorney

JCB:ja
Enclosures